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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 99 013 50314 Office: VERMONT SERVICE CENTER Date: SEP 7 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration.

The petitioner. a laundry business, seeks classification of the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager, to perform services as an executive manager. The director determined that the record did not establish that the beneficiary was employed abroad by a qualifying organization. The director further determined that the record did not establish that the beneficiary had been employed in a managerial or executive capacity for one continuous year of full-time employment within the three years prior to his entry as a nonimmigrant into the United States. Finally, the director determined that the record did not establish that the beneficiary had been or will be employed in an executive or managerial capacity.

On appeal, counsel states that "this office has submitted sufficient evidence to meet the criteria for visa classification."

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. However, the prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

Service regulations at 8 C.F.R. 204.5(j)(2) state, in pertinent part, that:

> *Affiliate* means: (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity....
>
> *Subsidiary* means a firm, corporation or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

Regulations require that the petition be accompanied by evidence that demonstrates that the prospective United States employer has been doing business for at least one year. See 8 C.F.R. 204.5(j)(3)(D).

In his decision, the director states that:

> You contend that the beneficiary has been, and will be, employed in a managerial capacity, and therefore qualifies as a multinational manager.
>
> The documentation submitted needs further explanation and/or amplification because the record does not establish a multinational business relationship or that the beneficiary has functioned and will function in an executive or managerial position as defined by the Immigration and Nationality Act.

The director requested that the petitioner "submit" additional evidence, in detail, to respond to the following concerns:

> 1. How many subordinate supervisors were under the beneficiary's management?
> 2. What were the job titles and job duties of the employees managed?

3. What managerial/executive and technical skills were required to perform the overseas duties?
4. How much of the time spent by the beneficiary was allotted to managerial/executive duties and how much to other non-managerial/executive functions.?
5. What degree of discretionary authority in day-to-day operations did the beneficiary have in the overseas job?
6. Who operated the business in the absence of the beneficiary?

The director further requested that the petitioner "not resubmit documents already contained in the record."

The director then proceeded with the following:

> In view of the above, you have not established that the beneficiary employed (sic) in a managerial capacity.
>
> In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefit sought. See Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966).
>
> Therefore, your petition is denied.

The director advised the petitioner that his decision could be appealed within 30 days from the date of the decision.

Although the director denied the petition, he provided no basis for the denial. The director's request for additional evidence cannot be considered reason for the denial of the petition. Further, counsel, within 30 days, provided a response to the director's concerns, which apparently was not reviewed by the director and was directly forwarded to the Administrative Appeals Office.

As it appears that the director did not review the additional evidence, which he requested, this case will be remanded to the director to review the additional documentation submitted and determine whether the petitioner has met the eligibility requirements under section 203 (b)(1)(C) of the Act.

The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of August 3, 1999 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.